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CONCORD, N.H.

1953

Dec. 31

Dr. Milton C. Daley
Commissioner of Education
Department of Education
State House Annex

Dear Dr. Daley:

I have your letter of December 29, 1953 in which you inquire concerning the legality of the use of the Emergency Fund for the education of deaf children.

The case presents difficulties because of legislative action with respect to the appropriation for this activity. By reference to page 165 of the Budget as submitted to the Legislature dated February 3, 1953, it is seen that you requested \$50,000 for the support and education of deaf children. The appropriation as finally made, however, reduced this figure to \$40,000. A determination, then, of whether or not an emergency now exists depends upon the facts before the Legislature at the time the appropriation was made. If that body was fully aware of the circumstances with which you might well be faced in carrying out your program and, notwithstanding this, reduced your requested appropriation as indicated, such action may well be taken to indicate the level at which the Legislature intended the program to operate; and this without regard to the fact that certain children might be deprived of the educational advantage.

If, however, circumstances have developed since the date the appropriation was made -- not then known to or reasonably to have been expected by the Legislature -- it is our view that the transfer from the Emergency Fund which you seek may legally be made. This is a matter of fact for determination by the Governor and Council upon such evidence thereof as you may wish to present.

As you are aware, under date of October 14, 1953, I addressed a letter to Governor Gregg with respect to this matter, in

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Dr. Milton C. Daley

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which it was pointed out that as of that time there was no deficiency in funds, and that a deficiency would not arise until April, 1954. You now advise me that your department must commit itself to the schools for the final half of the school year as of the third week in January. In this view, a finding by the Governor and Council under the principles stated above may properly include a finding that the emergency exists as of the present time.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW:RM